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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³

Debtors.

Case No. BK-S-06-10725-LBR,
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR,
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**Objection of USACM Trust to Proof of
Claim of Securities and Exchange
Commission (with Certificate of
Service)**

Date of Hearing: April 30, 2009
Time of Hearing: 9:30 a.m.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the
“Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the
“Bankruptcy Rules”), USACM Liquidating Trust (the “USACM Trust”) requests that the

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 Court disallow Proof of Claim No. 10725-01162 filed by the Securities and Exchange
 2 Commission (“SEC”).

3 **I. JURISDICTION**

4 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
 5 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
 6 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

7 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and
 8 Bankruptcy Rule 3007.

9 **II. BACKGROUND**

10 A. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
 11 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
 12 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC
 13 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary
 14 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate
 15 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of
 16 the Bankruptcy Code. Debtors’ post-petition management of the Debtors was under the
 17 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
 18 (“Mesirow”), who served as the Chief Restructuring Officer.

19 B. USACM is a Nevada corporation that, prior to the Petition Date, was in the
 20 business of underwriting, originating, brokering, funding and servicing commercial loans
 21 primarily secured by real estate, both on behalf of investors and for its own account.

22 C. Under the Plan, the USACM Trust is the successor to USACM with respect
 23 to standing to seek allowance and disallowance of Claims.

24 D. The USACM Trust exists as of the Effective Date of the Plan, which was
 25 March 12, 2007. Geoffrey L. Berman is the Trustee.
 26

1 **III. APPLICABLE AUTHORITY**

2 A. Under the Bankruptcy Code, any claim for which a proof of claim has been
3 filed will be allowed unless a party in interest objects. If a party in interest objects to the
4 proof of claim, the Court, after notice and hearing, shall determine the amount of the claim
5 and shall allow the claim except to the extent that the claim is “unenforceable against the
6 debtor . . . under any . . . applicable law for a reason other than because such claim is
7 contingent or unmatured.” 11 U.S.C. § 502(b).

8 B. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.
9 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such
10 objections has been extended to June 10, 2009, by this Court’s orders.

11 C. A properly filed proof of claim is presumed valid under Bankruptcy Rule
12 3001(f). However, once an objection to the proof of claim controverts the presumption,
13 the creditor ultimately bears the burden of persuasion as to the validity and amount of the
14 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,
15 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate
16 burden of proof as to the validity of a proof of claim “remains at all times upon the
17 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,
18 1039 (9th Cir. 2000).

19 **IV. OBJECTION TO CLAIM**

20 USACM Trust objects to Claim No. 1162 filed by the SEC in an unknown amount
21 because the SEC’s proof of claim fails to provide sufficient documentation and the SEC
22 has failed to file a complaint against USACM.

A. The SEC's Proof of Claim Fails to Provide Sufficient Documentation.

Bankruptcy Rule 3001(c) requires a creditor filing a proof of claim to submit sufficient documentation with its proof of claim to support its claim. Here the SEC has filed a proof of claim with only a brief paragraph describing in very general terms the SEC's potential claim against USACM. To date, the SEC has not amended its claim to provide any detail or clarify whether it is even making a claim. The SEC's claim is, therefore, not properly filed and should be disallowed.

B. The SEC Has Failed to Take Any Action Against USACM.

The SEC's claim was filed on November 9, 2006, since that time the SEC has not filed a single action against USACM in any court. The SEC has had over two years to bring some sort of action against USACM. The SEC has filed a complaint against one of the principals of USACM, namely Joseph Milanowski, however that complaint does not name USACM as an additional defendant.

V. CONCLUSION

The USACM Trust asks that the Court disallow Proof of Claim No. 10725-01162 and requests such other relief as is just and proper. The USACM Trust reserves the right to make further objections to this claim.

DATED: March 27, 2009.

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1 PROOF OF SERVICE

2 Copy of the foregoing mailed by First
3 Class, U.S. Mail, postage prepaid, on
4 March 27, 2009 to the following parties:

5 U S Securities and Exchange Commission
6 5670 Wilshire Blvd., 11th Floor
7 Los Angeles, CA 90036
8 Attn: Lynn M. Dean

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/s/ Carrie Lawrence
Carrie Lawrence